Preliminary Regulatory Impact Assessment
Comments and Responses

Note: The Preliminary Regulatory Impact Assessment (PRIA) is the January 11, 2005, document that was released with the second external draft of the STAR Program regulations, mostly identified as Draft #2 and dated January 10, 2005, although some of these regulations were unchanged from the September 16, 2004, Draft #1 versions. A draft Regulatory Impact Assessment (RIA) will be released in conjunction with the STAR Program package that includes the District-recommended changes to the proposed STAR regulations. Because comments on the previously released PRIA and comments on the prospective RIA were often indistinguishable, the comments have been combined. In addition, some comments that were styled as comments to the P/RIA have been grouped with comments under specific regulations or as comments to the overall program.

Comment: The District has not justified the STAR Program.

The PRIA was insufficient. The District should develop a comprehensive regulatory analysis that demonstrates the need for this rulemaking and the justification for the required risk reduction.
Arkema

The RIA should justify the time, effort and expense involved in collecting required data under these regulations.
LCP

The District does not make a case for the necessity of regulations that are extreme in nature as applied to chemical plants, nor does it make a case for excluding many other sources of risk that create the vast majority of community risk.
DDE

The intention of the West Louisville Air Toxics Study (WLATS) was to monitor for concentrations of chemicals, conduct a Risk Assessment at a screening level, and then implement a Risk Management Plan that included significant community interaction in developing risk reduction strategies. The approach taken by the District has circumvented that process. It is incorrect to use the results of the WLATS study as a blanket justification for this set of regulations.
DDE

The RIA is the key component in the process by which the Board determines whether regulations proposed for adoption are reasonable and necessary. KRS Chapter 77.185 sets the floor; however, this Board has gone one step further and established higher standards in Regulation 1.08 Section 7. Based on our review, the PRIA prepared by the District does not meet the stringent standards established by the Board in Regulation 1.08 Section 7. For instance, Section 7.2.2 requires that the RIA include, as part of the discussion of the feasibility of all alternatives considered, a description of the following: the approach for reducing emissions, the estimated level of emission reductions to be achieved, the available pollution prevention measures, and the

reason why the alternative was chosen or not chosen. This information is required for each alternative considered by the District. There are many examples where the District evaluation doesn't achieve the level of specificity that the Board has set forth in Regulation 1.08 Section 7. It is imperative that the Board review the final regulatory impact assessment to ensure that it meets the requirements of that regulation so that it has complete information upon which it can determine that the regulations proposed are reasonable and necessary.
Rachael Hamilton

Response: In the RIA, the District will address the elements that are required by KRS 77.185 and District Regulation 1.08, including the basis of the proposed STAR regulations.

Comment: The District should quantify the reductions in toxic emissions it expects to achieve through the STAR Program.

Please quantify the emission reductions the District expects to achieve with these regulations.
- What effect will they have on ambient concentrations of HAPs?
- What emission reductions of Category 1 TACs does the District expect if all Title V sources are able to achieve the 1 in 1 million goal?

Borden

The District has not shown that the regulations will in fact reduce the levels of air toxics in any appreciable amount.
LCP

The District failed to provide sufficient information on the estimated level of emission reductions expected from the program, nor on pollution prevention measures that are available.
R&H

Response: The health and welfare effects from exposure to an air contaminant depend upon the concentration and duration of exposure (see the proposed definition of "toxic air contaminant" in Regulation 1.02 section 1.75). The focus and requirements of the STAR Program are on the risk resulting from a concentration of a TAC for the averaging time period applicable to that TAC. Regulation 5.21 establishes the levels of risk that are deemed environmentally acceptable for certain TACs emitted from certain stationary sources. If compliance with the environmental acceptability (EA) goals in Regulation 5.21 section 2.8 are achieved, then the expected outcome of the portion of the STAR Program that affects the Group 1 and 2 stationary sources is that the risk from the affected TACs emitted by those stationary sources will be reduced, if necessary, to the levels of these EA goals.

The District believes that implementation of the initial phase of the STAR Program will result in meaningful reductions in the concentrations of the affected TACs in the vicinity of the affected stationary sources. For example, for some chemicals, such as chloroprene, 1,3-butadiene, and acrylonitrile, the largest reported emissions were from stationary sources located in close proximity to the monitors that registered the highest concentrations for those chemicals during the WLATS. These concentrations are most logically attributed to the emissions from these nearby stationary sources. Reductions in those emissions will reduce the ambient concentrations of those chemicals, thus reducing the risk. Pursuant to Regulation 5.30, emissions from the other

stationary sources and the other source sectors (area, non-road mobile, and mobile sources) will be assessed and addressed.

Comment: The District should address risk from other sources in the RIA.

The RIA must include a detailed discussion of the source of risks in Jefferson County, the source of those risks noted in the WLATS, and how the District specifically plans on reducing total risk to the community. This regulatory analysis will also serve as a significant portion of the analysis that the District has proposed in Regulation 5.30.
AIK

Approximately 1/3 of Toxic Release Inventory (TRI) air emission in Jefferson County are reported by companies that are most affected by this set of proposed regulations. The remaining air emissions, which constitute the strong majority of total community risk, are unaddressed or will not be addressed until much later.
DDE

The PRIA failed to address the fact that many of the chemicals it proposes to regulate to extremely low levels are present in areas of Jefferson County that are not near regulated sources.
DDE

The PRIA failed to address the 2004 Metro Louisville Health Department study that addressed health issues in the community, including a high incidence of lung cancer from smoking and a breakdown of the causes of death in this community. The report does not attribute any cancer deaths to emissions of TACs.
LCP

In the PRIA, the District stated that the issue of high concentrations of toxic air contaminants (TACs) in Jefferson County is being addressed for reasons that include that the EPA Region 4 *Air Toxics Relative Risk Screening Analysis* identifies "Jefferson County as having the highest potential adverse impact of toxics of all counties in the eight southeast states." While Jefferson County did rank as number 1 out of all 736 counties in EPA Region 4 in the *Screening Analysis*, a detailed review of the 14 variables that contributed to the relative risk ranking methodology used in the *Screening Analysis* indicates that toxic emissions from industrial sources are not the factors that cause Jefferson County to be at the top of the list. (Further explanation, pp. 5-7 of comments)
GLI

Response: Pursuant to Regulation 5.30, the emissions from the other stationary sources and the other source sectors (area, non-road mobile, and mobile sources) will be assessed and addressed. The District disagrees that it must perform the analysis proposed in Regulation 5.30, or document a direct cause-and-effect relationship between specific emissions and deaths or other harmful effects, before reducing controllable risk from TACs emitted by stationary sources. Title V and FEDOOP sources emit more than 97% of the reported hazardous air pollutant (HAP) emissions from all stationary sources in Jefferson County. The complete STAR Program will assess and address emissions from the other source sectors.

The District notes that the overall time frame for Group 1 and 2 stationary sources to comply with the EA goals is recommended to extend, including extensions, until September 30, 2012, nearly the same time frame as the December 31, 2012, deadline in Regulation 5.30.

Comment: The District should address the following in the RIA:

We request that the District address staffing needs for all its programs in the RIA, so that the regulated community does not see District resources diverted from the overloaded permitting program to other important but still resource-constrained programs.
AIK

The PRIA was silent on the future costs of the STAR program. The District has stated that outside funding sources that were available for 2005 are not expected in the future and that emission fees will have to be increased. This will probably mean more cost to regulated facilities, but since no information has been included in either the regulation or the PRIA, we are unable to evaluate the impact.
R&H

The District should divulge plans for funding the STAR Program beyond FY2005. If no plan exists, the District should develop a plan, which should be disclosed and subject to further public review and comment, prior to implementation of the STAR Program.
Cheryl Fisher

The District must answer the following questions:
-What are the total current incidence rates of cancer attributed to air emissions in Jefferson County *(please include sources of data and types of cancer in all responses)*?
- What are the current incidence rates of cancer attributed to air emissions from major sources within Jefferson County?
- What are the current incident rates attributed to air emission from area and mobile sources within Jefferson County?
- How was the District able to differentiate the types of cancer and cancer rates cause by emissions from major, mobile and area sources within Jefferson County?
- What are the current incidence rates of cancers in Jefferson County attributed to air emissions from sources outside of Jefferson County?
- What is the estimate for the number and types of cancers that will be prevented by reducing major source emissions by the STAR program?
- What does the District consider as other serious adverse health effects of emissions? - - What are the current rates of other serious adverse health effects that are caused by major source emissions in Jefferson County to the residents of Jefferson County?
- How was the District able to differentiate the adverse health effects caused by major source emissions and the emissions from mobile and other sources?
- How will the District be able to differentiate the risk to the public of other serous adverse health effects caused by airborne toxics emitted outside of Jefferson County?
- What will the District consider a significant reduction in the risk to the public of other serous adverse health effects caused by airborne toxics emitted in Jefferson County?
- How will the District quantify the risk information, collect future data, analyzed this data and publish progress?

- How will the District be able to demonstrate to the community the effectiveness of the STAR Program?
- How was the District able to quantify mobile source air toxics emissions and their affect on the WLATS?
Solae

Response: In the RIA, the District will address the elements that are required by KRS 77.185 and District Regulation 1.08. The District disagrees that it must document a direct cause-and-effect relationship between specific emissions and deaths or other harmful effects before reducing controllable risk from TACs that are known to be emitted by stationary sources. Title V and FEDOOP sources emit more than 97% of the reported HAP emissions from all stationary sources in Jefferson County.

Regarding District staffing needs, the District's 2005 budget included five additional staff positions. These approved staff positions will be rolled into the new fiscal year's budget. Three of the five additional positions could be directly involved in the review of environmental acceptability for TACs in construction permits. The District intends to have adequate resources to implement the STAR program.

Comments on estimated costs and savings, general:

The PRIA did not fully weigh: 1.) the health benefits and 2.) economic and community costs as required.
DDE, DPF, GLI, Noveon, Solae, Zeon

The PRIA included only gross approximations of the cost of the program. True costs may be much higher.
Engelhard, LGE, Noveon, R&H, Zeon

Sources affected by the STAR program include LGE, hospitals, Jefferson County schools, UofL, Ford, GE etc. All these costs will be passed on to the public in the form of increased taxes and utility rates, decreased services, or increased consumer product costs. Please include such costs in the RIA.
Solae

The PRIA contained only a very preliminary cost-benefit relationship of these regulations and did not consider the technical and economic feasibility of the program. The District can only acquire this information by meeting with affected companies.
AIK

The PRIA did not comply with KRS 77.185 or District regulations. Among other deficiencies, the costs associated with implementation are far in excess of those estimated. (Examples given, pp. 44-45 of comments.) The District also fails to take into account the low level of emission reductions that the STAR program would in fact achieve.
LCP

Response: In the RIA, the District will address the elements that are required by KRS 77.185

and District Regulation 1.08.

Comments on estimated costs and savings, cost to affected sources:

The PRIA failed to provide the operating costs to implement the additional data collection and reporting requirements of Regulation 1.06, the changed malfunction reporting requirements of Regulation 1.07, the implementation of a malfunction prevention program pursuant to Regulation 1.20, the effort necessary to calculate a BAC pursuant to Regulation 5.20, the cost necessary to perform the calculations required by Regulation 5.21, or the cost of performing each Tier of the modeling pursuant to Regulation 5.22. These are only examples of some of the operating costs that will be required to comply with the STAR Program, which will require the hiring of new personnel, the training of new and existing personnel, the set up of record-keeping and reporting systems, the identification and design of new control equipment, and other actions necessary to implement the new requirements of the STAR Program.
GLI

The District consistently underestimates the impact of these regulations on the regulated community. With the proposed parameters, it is expected that we will have to conduct even more complex and expensive monitoring than Level 4. Our experience is that the effort required will be as much as 10x that estimated by the District.
DDE

The economic impact estimates in the PRIA were insufficient. The District stated that it based its estimates of modeling effort on employees of state agencies, rather than persons who actually perform these services for industrial clients. The District's estimates are unrealistic and do not take into account the number of tasks involved. (Examples given.)
Caldwell

The District has not provided an adequate estimate of the costs and savings attributable to its proposal. Most of the cost estimates have come from governmental entities or reports. The District did not even attempt to estimate the capital and operating costs, let alone savings if there are any, associated with the program. The very general estimates in the PRIA were not in conformance with District Regulation 1.08 sec. 7.2.1. (Examples, LCP comments pp. 42-43)
LCP, R&H

The cost of control strategies addressed by the District far underestimated actual anticipated costs. We estimate that the minimum capital cost of the next potential emission reduction would be $35,000 per ton. Additional emission reduction projects approach $150,000 per ton. Both values far exceed the $20,000 per ton used in the PRIA and implied as an upper bound.
DDE, LCP

We estimate that for our 3 facilities, the initial cost to identify all TAC sources, model, and establish tracking mechanisms will be approximately $450,000, with ongoing costs for recordkeeping and monitoring to be as much as twice the initial cost. This is based on the number of TACs (including insignificant amounts contained in hand solutions, lab chemicals, inks, degreasers, etc.), the number of potential emissions points, the tremendous data collection effort as little to none of the modeling information is currently compiled, etc.

B-F

Under the regulations as proposed, we estimate that it will cost $20 million to $700 million dollars to control sulfuric acid on our units.
LGE

We estimate that compliance with STAR will cost our facility will cost $1,320,000 - $9,500,000 per year (including amortized capital costs and annual operating costs) for only two of our processes.
LCP, Zeon

Although we are in full compliance with current emission standards, we project that the STAR Program will require us to invest an estimated $15-20 million in additional redundant pollution control devices. Beyond this capital investment, there would be ongoing personnel and operating costs estimated in the hundreds of thousands of dollars. These significant added costs will make it very difficult for SCI to remain competitive and remain an employer in Jefferson County.
SCI

If required to install control devices on our paint booths to meet the EALs, such as a thermal oxidizer, potential capital and operating costs (easily as high as $1 million and $500,000 per year, respectively) would likely be too high for us to continue painting tank components in Louisville. Additionally, operating a thermal oxidizer would likely cause us to begin emitting significant quantities of nitrogen oxides. The cost to reduce regulated TACs to the proposed EALs could easily reach $50,000 per ton, significantly more than the reasonable cost ranges quoted in the PRIA.
Caldwell

To model the fugitive and stack emissions of a single TAC, if we were able to demonstrate compliance after running the Tier 3 model, our cost could be approximately $1,000. If modeling results do not meet EALs, Tier 4 modeling will be required. The estimated cost for this modeling would be an additional $7,000. If the limit can not be met after running both Tier 3 & 4 models, we will then be required to develop a compliance plan, which could cost an additional $ 4,000. The costs of plan implementation and equipment to comply with the regulation can not be determined until all the modeling has been completed.
Solae

At best, we are facing tens of thousands of dollars each year for multiple years of repeated modeling and calculation exercises that might show compliance. The STAR Program is a strong incentive for them to seriously consider closing or relocating their fabrication shop, which would

result in the loss of hundreds of skilled labor jobs and millions of dollars for this community.
Susan Logsdon

Using the same expression of cost as the District used, which was the cost/ton of pollutant reduction, the lowest cost was $35,000/ton.
Carolyn Brown

The annual cost for the Center to do fuel switching would add $6 million to the fuel costs. It would quadruple the Center's energy cost from the $2 million now spent on coal to $8 million on gas. One of the unintended consequences of the regulation is that it is going to affect the cost of health care in the community. Of the $6 million added cost, 2/3 is attributable to the hospitals and 1/3 to the research and educational buildings. If $4 million is divided by 1,500 patient beds, that is $2,700 a year in extra costs per bed.
Edward Dusch

In addition to not being identified in the WLATS, sulfuric acid is not listed as an urban air toxic or a hazardous air pollutant by the EPA. If the STAR Program is passed as is, it could require LG&E to invest anywhere from $20 million to $700 million capital dollars plus millions annually thereafter to comply.
Sharon Dodson

Response: In the PRIA, the District estimated the number of affected facilities, the range of affected facilities, and the combined capital and operating costs, on a dollars per ton basis, associated with compliance with the STAR Program. The District relied on information that was reasonably available. The District will retain these estimates in the RIA as well as add the cost information that has been provided pursuant to the public review process. The District did not, in the PRIA, identify a savings to the affected stationary sources; savings are incurred through the reduction of adverse effects on health and welfare resulting from the reduction in the ambient air concentrations of certain TACs.

The District notes that the only proposed STAR Program regulation that contains emission standards, including work practice or operational requirements that are immediately applicable to existing specific processes or process equipment, Regulation 1.21, is being withdrawn from the STAR Program regulatory package and, at a later date, may be recommended as a new draft. A revised draft would undergo a new formal public review process. Because of this, the District is not including, in this document, comments that relate to proposed Regulation 1.21.

Comments on the feasibility of alternatives considered:

The District must justify why it borrowed regulations from other jurisdictions (such as the Texas Highly Reactive VOC LDAR program or the Michigan air toxics program), how the special circumstances that caused those regulations to be promulgated apply to specific sources in Jefferson County, and why the District rejected many alternate regulatory schemes that exist in other jurisdictions around the country.
AIK, GLI

The District seems to have identified a peer group only including the most onerous air toxics

regulations (Michigan, Texas-HRVOC, Oregon, Vermont, California) in the response to comment document. We recommend that the District should more seriously consider two groups of peers: Kentucky and adjacent states, and the Region IV states.
AIK

The PRIA failed to provide the information required by District Regulation 1.08 sec. 7.2.2 for the alternatives that were considered. The District has stated that it has reviewed all state air toxics programs (*Response to Comment*: Overall-8, pg.-3) and some local programs identified in footnote 12 of the PRIA, but does not include the approach that is used in each of those state and local programs for reducing emissions; the estimated level of emission reduction that those programs might achieve if applied in Louisville Metro; the available pollution control measures associated with those programs; and, in particular, does not state the reasons why the alternatives provided by those programs were chosen or not chosen. Since it is clear that the District has considered each of those programs as a potential alternative to the STAR Program, or relied upon those programs in part for drafting sections of the proposed STAR Program regulations, a discussion of those alternatives with that information is required in order to comply with Regulation 1.08 Section 7.
GLI

There are no instances [in the PRIA] where the District compared what it selected to some other choice it may have had. District staff have indicated that the District reviewed every air toxic regulatory program in the country before developing the STAR proposal. Reportedly the staff relied heavily on Michigan, California, and Texas programs - thus, they must also have rejected other programs. There is no explanation of how decisions to accept and reject programs were made. Therefore, the District has not fulfilled its obligation to give a reason "why an alternative was chosen or not chosen."
LCP, R&H

Under Michigan's program, T-BACT (Best Available Control Technology for Toxics), does not apply to new or modified emission units that are in compliance with the certain requirements (given). There are no similar exceptions in the STAR Program and the District has provided no explanation in either the response to comments or the PRIA as to why such exceptions are not appropriate. The District did not state in the PRIA the reasons that it chose to not accept these provisions of the Michigan program, while accepting other provisions.
GLI

Michigan's R. 227, *Demonstration of Compliance with Health-based Screening Levels* is used to determine an acceptable emission rate. Under the proposed STAR Program, such tiers are used in proposed Regulation 5.22, *Procedures for Determining the Maximum Ambient Concentration of a Toxic Air Contaminant*, to determine a maximum ambient concentration that is then used to determine a source's risk in Regulation 5.21, *Environmental Acceptability*. Michigan R. 227 and the proposed STAR regulations appear to have two different purposes. There are other differences in the use of models between the proposed STAR program and Michigan's, including different averaging times (given).
If the Michigan regulation differs from the proposed STAR regulations, the District cannot justify its adoption on the basis of the Michigan regulation. The credibility and scientific soundness of the proposed STAR Program cannot be bootstrapped by reference unless the two

programs are identical in all material aspects.
GLI

There are significant differences in how Tier 4 modeling is performed under proposed Regulation 5.22 sec. 5 and the same modeling under the Michigan program, according to Michigan Air Quality Dispersion Modeling Guidance. For example, Michigan, unlike the District, does not require the use of five year data sets to model compliance with its air toxics program, Rule 225. Five year data sets are only required for use in demonstrating compliance with the Title V Prevention of Significant Deterioration program.
GLI

The District has stated that it reviewed all state air toxic programs and air toxics programs currently used in peer cities. As part of its review it included citations to spread sheets summarizing the number of regulated sources, types of sources regulated, the standards regulating carcinogens and those regulating non-carcinogens. Regulation 1.08 Section 7 requires more than the summary review. The District does not discuss the approach used in each of these state and local programs for reducing emissions; or the estimated level of emission reduction that those programs might achieve if applied in Louisville Metro; or the available pollution control measures associated with these programs; or, more importantly, why the measures associated with these program were chosen or not chosen. It is not enough to say that other state programs may be more stringent than federal law. Since it is clear that the District has evaluated these state programs as a potential alternative to the STAR Program and in some cases relied upon this program in part for drafting, discussion of the alternatives with all this information is required by Regulation 1.08 Section 7.
Rachael Hamilton

Response: A risk-based air toxics program will have certain basic elements: a method for establishing the toxicity of a chemical; a policy for establishing the acceptable risk of a chemical; and a method for comparing emission levels to the acceptable risk. Additionally, an air toxics program will specify which chemicals are to be included in the program and any exemptions deemed appropriate. The District examined, to varying degrees (explained more fully in the RIA), some of the approaches used by other jurisdictions for these elements, and incorporated some aspects of other programs into the STAR Program regulations, keeping in mind Louisville's unique circumstances.

Comment: The District and the Board should consider our Air Toxics Task Force's proposed revisions to the STAR Program as an alternative to the version 2 of the STAR Program that was released on January 14, 2005. Therefore, the District and the Board should address in the final RIA the reasons that the proposed revisions contained in the Air Toxics Task Force proposed revisions were chosen or not chosen, as required by Regulation 1.08 Section 7.2.2.4.
GLI

Response: The District is not required to consider any particular set of regulations when considering the feasibility of alternatives as prescribed in District Regulation 1.08 sec. 7.2.2. However, the District is recommending that the Board incorporate a number of significant changes based upon specific comments submitted by the commenter and its members.

Comments on the comparison with federal or state minimum or uniform standards:

In discussing the federal program for controlling TACs, the District pointed to the fact that the EPA residual risk program allows a range of risk from 1 to 100 in 1,000,000 as a reason for implementing the STAR Program. The District disregarded the analysis of the Kentucky Air Toxics Workgroup, which noted that a 1 in a 1,000,000 cancer risk may be a screening value but is not a standard.
LCP

The discussion of the comparison regarding Regulation 1.02 was inadequate, since it failed to contrast or explain the differences between the new and amended definitions and the definitions used by EPA and the Kentucky Division for Air Quality.
GLI

Regulation 1.02 - The District noted that it had identified five organic compounds that EPA, on November 29, 2004, exempted from the definition of "volatile organic compound." There does not appear to be any rationale or justification for the inclusion of these compounds or assessment of the increase costs associated with that determination.
LCP

The comparison for Regulation 1.06 failed to identify what the enhanced emissions reporting information is, or how that information differs from what is currently required under federal and state requirements.
GLI

Regulation 1.06 - The District stated that total plant-wide emissions, broken down into stack and fugitive emissions, are required by EPA to be reported for all TRI chemicals which include all the Category 2 and many of the Category 1 TACs. Because of the de *minimis* levels set in the TRI, many of the TACs that our members use are not reported and tracking systems are not in place for these chemicals. This substantial burden is not adequately evaluated.
LCP

The comparison for Regulation 1.07 claims that the automatic exemption for a malfunction as a violation is inconsistent with EPA policy memos, but does not describe what the federal or state regulatory requirement is, or whether the federal or state regulatory requirement does allow the same exemption. Similarly, the difference in the data reporting requirements between federal and state requirements is not described or provided.
GLI

Regulation 1.07 - The District's comment states that the current regulation, providing an exemption for violations that are reported, is inconsistent with EPA policy memoranda dated September 28, 1982, February 15, 1983, and September 20, 1999. Although the District asserts that EPA "policy memos" require this change, EPA has taken no official action to disapprove the SIP on this basis. The District has not addressed the regulatory impact of this change.
LCP

In the comparison for Regulation 1.20, no information was provided as to whether there is any

minimum or standard requirement at the state or federal level.
GLI

The comparison for Regulation 5.01 did not describe how the definitions of this section differ from the definitions used at the federal or state level, and did not explain why the general duty provision under Section 3 is markedly different than the general duty provision in 401 KAR 63:020.
GLI

The comparison for Regulation 5.20 did not identify whether there is a state or federal minimum or uniform standard for developing a benchmark ambient concentration, or a similar type of number.
GLI

The comparison for Regulation 5.21 indicated that the Kentucky Division for Air Quality has identified a policy for demonstrating compliance with 401 KAR 63:020 for new sources by using a cancer risk that does not exceed 1-in-1-million. That statement is not correct. KRS 13A.130 prohibits the DAQ from implementing such a policy unless it is incorporated into a regulation. Since a standard for a cancer risk of 1-in-1-million has not been established in 401 KAR 63:020, the DAQ can neither implement such a policy nor enforce a cancer risk of 1-in-a-million as a standard. More importantly, the comparison of Regulation 5.21 failed to identify what the minimum or uniform standards are at the federal or state level and did not contrast what the STAR Program standards are to those minimum or uniform federal or state standards.
GLI

Regulation 5.21 - The District goes to great length to justify the 1-in-1 million risk goal, noting that the state has begun implementing a risk-based review within the construction permit process, establishing a standard of $1x10^{-6}$ increased risk of cancer as meeting the provision of 401 KAR 63:020. *See* PRIA at p. 2. This is incorrect. DAQ has not promulgated such a standard and cannot regulate by policy and guidance without violating KRS 13A. The PRIA is incorrect and does not properly assess the impacts of the choice of a 1 in 1 million cancer risk goal. Additionally, while the District discusses the basis for its proposal, it never addresses whether the proposed regulations are feasible.
LCP

The comparison for Regulation 5.21 cited the Clean Air Act as requiring a strategy to reduce the incidence of cancer attributed to emissions stationary sources by not less than 75%. However, the comparison does not describe what baseline has been established to determine what the cancer incidence is due to the emissions from stationary sources in Louisville Metro, so there is no baseline against which such a reduction can feasibly be measured or determined.
GLI

Regulation 5.21 - In the PRIA, the District quoted the Clean Air Act sec. 112(k)(3)(C), where the Act states that the goal is to reduce the incidents of cancer attributed to the emissions of stationary sources by not less than 75%. Section 112(k) is specifically focused on area sources. Thus, it would appear that the District's duty, if it has one under the Act, to reduce emissions is as great with respect to area sources as it is with respect to larger sources. The area sources will

not be considered before 2006 based on proposed Regulation 5.30.
LCP

The comparison for Regulation 5.22 failed to identify whether there are any federal or state minimum or uniform standards for the type of modeling that is required. Supposedly, the Tier 1 and 2 tables are based upon the Michigan program, but the District did not explain the differences between the Tier 1 and Tier 2 modeling as promulgated in the STAR Program and the Tier 1 and Tier 2 modeling under the Michigan program.
GLI

Regulation 5.23 - The District listed the basis for each of the four categories of regulated TACs. The statement concludes that 48 of the 54 Category 1, 2, and 3 TACs are regulated under Section 112 of the Clean Air Act as a HAP or as an urban air toxic. There is no basis for regulation of the other six and no comparison to other programs. As noted in the earlier comments, the data relied upon to support establishment of the program identified 18 constituents of concern. The District has not adequately assessed the cost of expanding the program.
LCP

Response: The Kentucky Division for Air Quality (DAQ) has stated that it is evaluating an approach to regulating air toxics that would generally reflect the federal approach to the regulation of residual risk, described as follows: "[R]isk levels lower than $1x10^{-6}$ would be presumptively acceptable and risk levels greater than $1x10^{-4}$ would be presumptively unacceptable." Under the cited federal residual risk program, a risk level of $1x10^{-4}$ is not a presumptive entitlement. If it were, the EPA could simply set the risk level at 100 in a million. However, the *target* is still one in a million, as it is under the proposed STAR regulations.

For comments on specific regulations, please see the Comment/Response Document.

Comments on the District's public outreach efforts:

The District creates the impression of a collaborative process with involvement by a large number of people with all of its public meetings during the informal comment process. However, since many of the same people in the regulated community and the community at large attended numerous meetings, the actual number of people involved in that process is much smaller than implied. In fact, those meetings were the only interaction allowed by the District, since the proposed regulatory package and the minor revisions made in the final proposed regulations was done with no stakeholder input whatsoever.
DDE

Response: The District's outreach efforts are described in the RIA. Partly as a result of the many meetings that District staff attended, and the comments that were received, the District is recommending to the Board a number of changes to the regulations. These changes are detailed in the *STAR Program Formal Comment/Response Document*.